

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES

In the Matter of the)	SUMMARY OF FACTS
Complaint Against)	AND
JEANETTE MCKEE)	STATEMENT OF FINDINGS

Allan Walters (Complainant), the Republican nominee and candidate for House District 60 in the 1996 general election, filed a complaint against Jeanette McKee (Respondent), incumbent Republican legislator for House District 60 and write-in candidate for House District 60 in the 1996 general election. The complaint alleges that Jeanette McKee violated sections 13-10-507, 13-10-602(1) and (2), 13-35-301, 13-37-201, 13-37-240, Montana Code Annotated (MCA) and 44.10.335, 44.10.325, 44.10.327, 44.10.329, and 44.10.332, Administrative Rules of Montana (ARM) when she began a write-in campaign for the general election. The complaint contains five separate allegations of violations of statutes and administrative rules.

Claim 1

Complainant alleges that Respondent is running as an independent candidate in the general election of 1996 after having lost the primary election of 1996 in violation of 13-10-507, MCA.

Claim 2

Complainant alleges that Respondent is utilizing the party name on various campaign materials and such use is alleged to be a violation of 13-10-602, MCA.

Claim 3

Complainant alleges that Respondent is misrepresenting herself as a Republican candidate and therefore is alleged to be in violation of 13-35-301, MCA.

Claim 4

Complainant alleges that Respondent has not complied with the statutes requiring her to file as a write-in candidate, and further alleges that Respondent is utilizing primary campaign funds in violation of various administrative rules as well as 13-37-201 and 13-37-240, MCA.

Claim 5

Complainant alleges that Respondent is acting as a political committee in violation of administrative rules.

SUMMARY OF FACTS

1. Allan Walters and Jeanette McKee were Republican opponents for the legislative seat in House District 60 in the June 1996 primary election. Jeanette McKee was the incumbent. Jeanette McKee lost in the primary election and Allan Walters became the Republican nominee.

2. There is no Democrat candidate for House District 60. Respondent has begun a write-in campaign for the 1996 general election.

Claim 1

3. Respondent filed a Statement of Candidate (Form C-1) with the Commissioner of Political Practices on September 4, 1996, indicating her intention to be a candidate in the general election. Respondent did not indicate that she was an Independent on that form. Respondent indicated that she is a Republican.

Claim 2

4. Respondent has utilized and distributed numerous brochures and other campaign material indicating that she is a Republican.

5. Although Respondent is not the Republican nominee, she is currently the Republican Representative for House District 60. Respondent is an active member of the Republican Party.

Claim 3

6. Complainant has not submitted any evidence indicating that Respondent has ever referred to herself as the Republican nominee for House District 60.

7. Respondent contacted the Commissioner of Political Practices prior to the Complainant's submission of a formal complaint and inquired about the proper method to handle campaign material in the circumstance of an incumbent engaging in a write-in campaign for the general election.

8. The Commissioner of Political Practices advised Respondent that the most conservative, cautious approach would be to indicate on the disclaimer portion of any campaign material either that Respondent was not the Republican nominee or that she was a write-in candidate.

9. Pursuant to her conversation with the Commissioner of Political Practices, Respondent placed the following disclaimer on all campaign materials which were printed after that conversation:

Paid for by the Jeanette McKee for Representative Committee
Ned Applebury, Chairman; Chuck Shonkwiler, Treasurer-Hamilton, MT 59840
By law, write-in candidates run without party designation.

10. Respondent has continued to utilize previously printed campaign materials without the specific write-in candidate disclaimer, and plans to do so until remaining materials are all disbursed. However, none of Respondent's materials state that she is the "Republican nominee."

Claim 4

11. Respondent had not filed her Declaration of Intent with the Secretary of State's office as of September 17, 1996.

12. Respondent filed a post-primary campaign finance report on June 24, 1996. Respondent has complied with all reporting requirements for candidates. In addition, Respondent has stated that she does not intend to utilize funds collected during the primary campaign until this complaint is resolved although she was instructed by the Commissioner of Political Practices that it is acceptable to her to do so. The filing date for Respondent's next report is October 24, 1996.

Claim 5

13. Respondent filed a Statement of Candidate (Form C-1) with the Commissioner of Political Practices on September 4, 1996. Respondent has not filed as a political committee.

STATEMENT OF FINDINGS

Section 13-37-111, MCA, provides:

Investigative powers and duties. (1) The commissioner of political practices shall be responsible for investigating all of the alleged violations of the election laws contained in chapters 35, 36, or 37 of this title and shall in conjunction with the county attorneys be responsible for enforcing these election laws.

(2) The commissioner may investigate all statements filed pursuant to the provisions of chapters 35, 36, or 37 of this title and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of chapters 35, 36, or 37 of this title. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of chapters 35, 36, or 37 of this title or any rule adopted pursuant thereto.

Section 13-1-201, MCA, provides:

Chief election officer. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

Section 13-37-111, MCA, provides the Commissioner of Political Practices with the jurisdiction and authority to investigate and resolve claims of violations contained in certain parts of the election code. Section 13-1-201, MCA, provides the Secretary of State with jurisdiction over other parts of the election code. This complaint contains allegations of violations which fall under the jurisdiction of the Commissioner of Political Practices, as well as alleged violations which fall under the jurisdiction of the Secretary of State.

Claims 1 and 2 of this complaint allege violations of sections 13-10-507 and 13-10-602, MCA. Both of these statutes fall under the jurisdiction of the Secretary of State.

Claim 1

Respondent alleges a violation of 13-10-507, which follows in full:

Independent candidates -- association with political parties not allowed. (1) A person seeking office as an independent candidate may not be associated with a political party for 1 year prior to the submission of his nomination petition.

(2) For the purposes of subsection (1), "associated with a political party" means having run for office as a partisan candidate or having held an office with a political party designation.

Claim 2

As stated in the statute above, in order to run in an election as an independent candidate, the individual seeking candidacy must submit a nomination petition. Additionally, the Secretary of State has indicated that such nomination petitions must be submitted prior to the primary election.

Respondent has not expressed an intention to run as an "independent" candidate, nor made any move to submit any petition accordingly. In fact, Respondent has referred to herself as a "Republican," and also refers to herself as the sitting Republican legislator, which she is, in fact.

Claim 3

Complainant alleges that because Respondent has used brochures, mailers, signs and other campaign materials which indicate that she is a Republican, she has violated the Code of Fair Campaign Practices. Complainant contends that Respondent has misrepresented herself as the Republican candidate.

Section 13-35-301, MCA, in pertinent part states:

I will not use campaign material of any sort which misrepresents, distorts, or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which aim at creating or exploiting doubts, without justification, as to the loyalty and patriotism of my opposition.

The Code of Fair Campaign Practices is a pledge which is often taken by candidates, however, signing the code and pledging to uphold the code are voluntary acts. Further, no statutory remedy exists for violations of the code. Rather, the Code of Fair Campaign Practices is an honor code enforced solely by each candidate's own moral compass.

Complainant alleges that Respondent violated the Code of Fair Campaign Practices by misrepresenting herself as a Republican candidate. However, the Commissioner of Political Practices has not received nor discovered any evidence which supports this allegation. Respondent does not refer to herself as the Republican nominee, nor has she attempted to persuade any other person that she is the Republican nominee. However, Respondent does refer to herself as the current legislative representative for House District 60. This is a factual statement. Respondent also publicly acknowledges her political affiliation as Republican. This also, is a factual statement. Although write-in candidates do not receive party designation, some write-in candidates may be closely associated with a particular party, as in this case. Respondent has been straightforward about her ties

to the Republican Party and also has expressed on occasion that, if elected, she will maintain her affiliation with the Republican Party.

The evidence does not support the finding of a violation by Respondent of Claim 3. I find that Respondent has not misrepresented her political party affiliation.

Claim 4

Complainant alleges that because Respondent has not yet filed her official Declaration of Intent with the Secretary of State for write-in candidacy, she is not a candidate. Therefore, Complainant alleges that any expenditures made through Respondent's primary account are in violation of the statutes as well as administrative rules.

Complainant alleges that Section 13-37-201, MCA, was violated. That statute states:

Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. . . .

Section 13-37-240, MCA, in pertinent part states:

Surplus campaign funds. . . . In disposing of the surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. . . .

Administrative Rule 44.10.335 is entitled "Disposal of Surplus Campaign Funds."

Subsections (2) and (6)(b) state in pertinent part:

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made.

(6)(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "campaign" means any organized effort to secure or prevent the nomination or election of a candidate for public office . . .

In analyzing this claim, the first issue is whether or not Respondent is a candidate. The facts reveal that Respondent is a candidate. Respondent filed a Statement of Candidate (Form C-1) on September 4, 1996. Respondent has begun receiving and expending money in conjunction with her write-in campaign and, therefore, is required to report such contributions and expenditures according to statute and administrative rule.

The second issue pertaining to this complaint is whether or not Respondent may lawfully use primary campaign funds during the general election write-in campaign. For guidance, the administrative rules pertaining to election and aggregate limits for elections are helpful. Administrative Rule 44.10.330 provides instruction for candidates and political committees on designation of campaign contributions. This rule allows candidates in a primary race to collect contributions for the general election, as long as the funds are kept separate and the general account is not utilized until after the primary election. Nothing in the rule precludes a candidate from redesignating funds already collected during the primary period for the general election, subject, of course, to the aggregate contribution limits. Further, Administrative Rule 44.10.337 specifically addresses aggregate contribution limits for write-in candidates. This rule states:

A candidate who is unsuccessful in a contested primary election, but who complies with applicable statutes to qualify as a write-in candidate for the general election, is subject to the aggregate contribution limits for both the primary election and the general election.

Clearly, Respondent may receive up to the aggregate limits for both a primary election and a general election, as long as she complies with the statutes and rules for write-in candidates.

The third issue in this claim is whether or not Respondent has complied with applicable requirements for write-in candidacy. Respondent is required to comply not only with the

requirements of the Commissioner of Political Practices, but also with additional requirements under the jurisdiction of the Secretary of State. Respondent has filed the necessary documents required by the Commissioner of Political Practices. Respondent is not required to file her Declaration of Intent with the Secretary of State until October 21, 1996. Up to this point, Respondent has complied with all applicable requirements and is considered by the Commissioner of Political Practices to be a write-in candidate for House District 60 for the general election of 1996.

The final issue pertaining to Claim 4 is whether or not funds remaining in Respondent's primary account are considered "surplus campaign funds" subject to statutes and administrative rules requiring disposal of those funds in a certain manner. Although two elections may be held for many candidates, there is only one campaign. Administrative Rule 44.10.335 as applied to this case, indicates that Respondent's primary election funds are not considered "surplus" unless "no other campaign funds will be received." Clearly, this is not the case. As a candidate, Respondent will continue to accept campaign contributions and spend those funds until the campaign has ended. Respondent may lawfully re-designate and utilize campaign funds received during the primary election period so long as she does not exceed the aggregate limits for each election period. It would make little sense to refund or donate funds given for the purpose of a campaign before the campaign has ended. Clearly, precluding candidates from utilizing their own campaign funds prior to the last election in a campaign is not in spirit with the intent of the law.

I find that there has been no violation by Respondent of laws or rules pertaining to Claim 4.

Claim 5

Complainant alleges that Respondent has not filed as a candidate and, because she is distributing material to influence an election, is acting as a political committee and is allegedly in

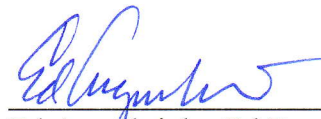
violation of statutes and administrative rules requiring political committees to file as such. I find that Respondent is not acting as a political committee, rather, Respondent is acting as a candidate, which, indeed, she is. Therefore, the cited statutes and rules pertaining to political committees do not apply in this case.

I find that there has been no violation by Respondent of laws or rules pertaining to Claim 5.

CONCLUSION

Based on the preceding findings and facts, there is insufficient evidence to conclude that Jeaneette McKee violated 13-35-301, 13-37-201, 13-37-240, 13-1-101, MCA, or 44.10.335, 44.10.327, 44.10.329, 44.10.325 or 44.10.332, ARM.

DATED this 19 day of September, 1996.



Ed Argenbright, Ed.D.
Commissioner